

VALUATION OF LAND  
FOR PUBLIC AND PRIVATE PURPOSES :

*A Study in Contrast*

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I hasten to add that the responsibility for all errors and omissions is entirely mine.

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**TABLE OF CONTENTS**

**Page**

**CHAPTER I THE PROBLEM**

**1**

**1.1 Introduction**

**1.2 Consequences of Undervaluation**

**1.3 Attempts to Curb Undervaluation**

**CORRIGENDUM**

- (1) Foot note 30 at p.29 - For (1952) S.C.R.869,  
read (1952) S.C.R. 889
- (2) Foot note 43 at p.34 - For A.I.R. 1973 S.C. 1223,  
read A.I.R. 1973 S.C. 701.

**2.3.1 Statutory Provisions**

**2.3.2 Judicial Guidelines**



CHAPTER V CONCLUSIONS AND SUGGESTIONS 67

- 5.1 Conclusions
- 5.2 Suggestions
  - 5.2.1 Income tax Provisions
  - 5.2.2 Pre-emption Provisions
  - 5.2.3 Stamp Act Provisions
- 5.3 Policy, Legislation and Implementation

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The Constitution of India  
The Income tax Act, 1961  
The Kerala Land Acquisition Act 1961  
The Kerala Land Acquisition Rules  
The Kerala Stamp Act, 1959  
The Wealth tax Act, 1957  
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Willis, Constitutional Law of the United States

LIST OF ABBREVIATIONS

A.I.R. All India Reporter  
E.P.W. Economic and Political Weekly  
I.L.R. Indian Law Reports  
K.L.T. Kerala Law Times  
S.C.J. Supreme Court Journal  
S.C.R. Supreme Court Reports  
S.C.W.R. Supreme Court Weekly Reports

LIST OF TABLES

CHAPTER III

TABLE 1: Category-wise classification of 30 Land Acquisitions  
2: Sale deeds considered for fixing compensation value for Poonthura Land Acquisition  
3: Sale deeds considered for fixing compensation value for Mannanthala Land Acquisition



- TABLE 4:** Sale deeds considered for fixing compensation value for Ambalamukku Land Acquisition
- 5:** Sale deeds considered for fixing compensation value for Aerodrome Land Acquisition
- 6:** Sale deeds considered for fixing compensation value for Neyyattinkara Land Acquisition
- 7:** Sale deeds considered for fixing compensation value for Kodangvila Land Acquisition
- 8:** Sale deeds considered for fixing compensation value for Kaniyapuram Land Acquisition
- 9:** Sale deeds considered for fixing compensation value for Kashakuttom Land Acquisition
- 10:** Sale deeds considered for fixing compensation value for Kevalam Land Acquisition
- 11:** Sale deeds Considered, Rejected and Accepted in Determining Compensation Values
- 12:** Relation between Highest Value in sale deeds and compensation value

#### **CHAPTER IV**

- TABLE 1:** A Summary of the Extent of Undervaluation in 32 sale deeds
- 2:** Distribution of Undervalued sale deeds in Different Categories and according to Place of Registration
- 3:** Extent of undervaluation in Metropolitan Areas, Developing Suburbs and Rural Suburbs

# CHAPTER I

## THE PROBLEM

### 1.1 Introduction.

The Constitution of India guarantees to every citizen the right to acquire, hold and dispose of property.<sup>1</sup> This right is subject to the power of the State to make any law imposing reasonable restrictions in the interest of the general public or for the protection of the interests of any Scheduled Tribe.<sup>2</sup> It is therefore clear that in the absence of a reasonable restriction imposed by the State, a citizen is free to dispose of his property in any manner he likes—ie., he can sell the property to any person he likes for any price he fixes. Without in any way challenging this basic right, it may be pointed out that no one has a right to play a double game while disposing of his property by selling it at the maximum price but stating a much lesser price in the document, causing loss of revenue to the State.

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1. Article 19 (1)(f), The Constitution of India.

2. Article 19 (5), The Constitution of India.

The prevalence of the practice of undervaluation, or more correctly understatement of the price when landed property is transferred, has attracted the attention of exports and various methods have been suggested to curb it. The Government, at the Union as well as the State level, has also taken cognisance of this matter as is evidenced from the changes made in the relevant statutes with a view to preventing undervaluation of landed property. Before analysing those measures and assessing their functional efficacy, it may be useful to examine why people might resort to undervaluation of landed property and also what the consequences of such undervaluation are for the Government.

## 1.2 Consequences of Undervaluation

Undervaluation of property results in loss of revenue to the State, at least in the following three ways:

- (1) Evasion of income tax: Under Section 45 of the Income Tax Act, 1961 any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to income-tax as capital gains. When the actual consideration for a transfer of immovable property is not stated in the instrument of transfer, evasion of Income Tax under the head "capital gains" by the transferer takes place.
- (2) Evasion of wealth tax: Wealth tax is payable in respect of the net wealth. When the price of immovable property is

stated to be less than the actual price, there is a corresponding decrease in the value of the net wealth of the assessee, resulting in evasion of wealth tax. Here the beneficiary is the transferee.

Evasion of income tax and wealth tax does not take place as a rule in every transaction where there is an understatement of value because the provisions of these two Acts apply only to those persons whose total income or value of net wealth exceeds a specified amount. Moreover rural agricultural land is excluded from the purview of these statutes. Also in cases where undervaluation enables a person to evade income or wealth tax (or both) the gain from such evasion differs from person to person depending upon the rate of tax, given highly progressive rate schedules of taxation in both cases, at which he would have been chargeable had he not resorted to undervaluation.

(3) Evasion of Stamp Duty: This invariably takes place in every transaction where there is an understatement of value. Since stamp duty is in the State List,<sup>3</sup> there are state legislations prescribing the rates of duty chargeable on instruments. The Kerala Stamp Act,<sup>4</sup> for instance, makes it obligatory that "the consideration if any and all other facts and circumstances

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3. See entry 63, List II, Seventh Schedule, Constitution of India.

4. Act 17 of 1959.

affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein."<sup>5</sup> Any omission to comply with this requirement is made punishable with fine which may extend to five thousand rupees.<sup>6</sup> Moreover a penalty which may extend to one thousand rupees may be imposed for devices to defraud the revenue.<sup>7</sup> But in spite of these penalty clauses the practice of undervaluation of property in contravention of the Statutory provisions resulting in evasion of stamp duty goes on.

Apart from evasion of tax causing loss of revenue to the public exchequer, understatement of property values provide an outlet for black money.<sup>8</sup> According to an estimate, understatement of property values in sale deeds comprises an outlet of Rs. 240 crores a year of tax evaded money.<sup>9</sup> Needless

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5. S. 28, The Kerala Stamp Act (1959)

6. S. 62, *ibid.*

7. S. 63, *ibid.*

8. According to the Manchoo Committee, a "convenient device frequently adopted for secretly utilising black money is to invest it in immovable property by understating the purchase consideration. This not only saves stamp duty but also results in evasion of income tax and wealth tax in the hands of the investor, while the vendor escapes his proper liability to capital gains tax. In addition it creates a fresh nucleus of black money in the hands of the vendor, which leads to its proliferation in the economy." Direct Taxes Enquiry Committee, Final Report (1971), p.60.

9. I.S. Gulati & T.M. Krishnan, On Deterring Undervaluation of Property, EPW (1973), p. 337.

to say, this will have a deleterious effect on the national economy.

### 1.3. Attempts to curb Undervaluation

Many measures were introduced by the Union as well as various State Governments to curb the growing tendency of undervaluation. The Wanchoo Committee's recommendation for compulsory acquisition of immovable properties in cases where the sale deeds did not reflect the fair market value was accepted by the Government.<sup>10</sup> To give effect to this recommendation, the Taxation Laws (Amendment) Act, 1972 was introduced, inserting Chapter XX A in the Income-tax Act. This Chapter empowers the Assistant Commissioner of Income-tax to make an order for the acquisition of any immovable property which has been transferred by one person to another if the following cumulative conditions are satisfied.

- (i) There should be a transfer of immovable property of a fair market value exceeding Rs. 25,000.
- (ii) The transfer should not be by a person to his relative on account of natural love and affection for a consideration which is less than the fair market value with a

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10. Many years before the Wanchoo Committee, Kaldor had made such a suggestion. "The problem of valuing of properties for purposes of taxation could be effectively solved if the responsibility of valuing the property was put squarely on the tax payer, with the government retaining the right of acquiring the property at the tax payer's own valuation in cases of dispute." Nicholas Kaldor, Indian Tax Reform, Report of a Survey (1956), p. 25.

recital to that effect in the instrument of transfer.

(iii) The competent authority should have reason to believe that the fair market value of the property exceeds the apparent consideration by more than 15% of the apparent consideration.

(iv) The competent authority should have reason to believe that the consideration for the transfer as agreed to between the parties has not been truly stated in the instrument of transfer.

(v) The competent authority should have reason to believe that the understatement of the agreed consideration in the instrument was with the object of-

(a) facilitating the reduction or evasion of the tax liability of the transferor in respect of any income arising from the transfer, or

(b) facilitating the concealment of any income or wealth of the transferee.

The compensation payable on such compulsory acquisition is a sum equal to the consideration stated in the instrument of transfer plus 15% thereof.

These provisions do not seem to have produced the desired result, mainly because of the limitations imposed by the conditions to be satisfied and also because of the fact that even if the conditions are satisfied the government is not bound to acquire the property. The first condition, viz. these

provisions are attracted only when there is a transfer of property of fair market value exceeding Rs. 25,000 will give room for parcelling off land in pieces. This fear was expressed by in a Minutes of dissent by K. Baladhandayuthan M.P. in the report of the Select Committee.<sup>11</sup> The exemption made in favour of transfers on account of natural love and affection will also provide an opportunity to tax evaders, unless the word 'relative' in S. 269 Q is clearly defined and the power of acquisition is extended to such transfers also when they are found to be of a bogus or 'bensmi' nature. The time limit within which proceedings for acquisition must be initiated is nine months from the end of the month in which the instrument was registered.<sup>12</sup> This also acts as a serious limitation on the power of acquisition.

The quantum of compensation prescribed by the Act, viz. the value stated in the instrument of transfer plus 15% thereof, does not act as a deterrent on understatement of values. On the other hand it was an incentive to tax evaders. Under S. 271 of the Income Tax Act, as it stood before the Taxation laws (Amendment) Act, 1975 the minimum penalty for a person who has concealed the particulars of his income or furnished inaccurate particulars of such income was equal to the concealed income and maximum penalty could be twice that

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11. See Gulati & Krishnan, op. cit.

12. Section 269 D, Income tax Act, 1961.



amount. This meant that a person, who evaded tax through understatement of the value of property transferred, was more favourably treated than any other tax evader, because when the value is understated by 50% he would get a compensation equal to 57.5% of the market value and only the balance, i.e. 42.5%, would be appropriated by government. This was, of course, less than the concealed income. But this defect was rectified, not by increasing the penalty in the case of undervaluation, but by lowering the general penalty. Now the minimum penalty for concealment of money under S. 271 is equal to the amount of tax sought to be evaded and the maximum penalty is twice that amount.<sup>13</sup> Though this amendment has made the position of the "tax-evader through understatement of values" worse in comparison with other classes of tax-evaders, it cannot be said that the acquisition provisions will be sufficient to deter such persons from understating the value of property. So long as these provisions are only 'enabling' and not 'binding' on the government, effectiveness of this deterrent will depend on assessment of the chances of being penalised. Since both the buyer and the seller will gain from undervaluation, it is only natural that there will be a collusion between them. They know very well that only in rare cases the power of acquisition will be invoked, and even when it is done there are

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13. This change was introduced by the Taxation Laws (Amendment) Act, 1975 with effect from 1st April, 1976. The criticism of Gulati and Krishnan (op. cit.) that penalty in the case of understatement of value when property is transferred is less than the general penalty, is no longer valid. But strangely enough, this was done by relaxing the penalty provisions in favour of the tax evader, and not by making the provisions relating to acquisition in the case of understatement more stringent.

so many escape routes. After carefully considering the various aspects of this problem, Gulati and Krishnan suggest that the government's power to acquire property in cases of undervaluation should be made obligatory.<sup>14</sup> Neither the organisational effort nor the problem of mobilising funds should pose a major constraint.

Another method employed to curb the tendency of under valuation was by enacting pre-emption laws, a device successfully employed in France. Many Indian States like Punjab moved in this direction. But similar attempts seem to have suffered a set back in our contry after the decision of the Supreme Court in Bhay Ram v. Baiji Nath<sup>15</sup> that the right of pre-emption based on vicinage was unconstitutional as it placed restrictions on the right to deal with property guaranteed in Article 19(1)(f) of the Constitution, and was of no advantage to the general public. But some leading jurists, in a working paper, have asserted the competence of the State legislatures to enact such a law. According to them in the case of a law giving to the State the right of pre-emption, "the interest of the general public" is obvious and the Courts can be convinced of its reasonableness if the purpose and objects of the law are properly spelled out in the Act.<sup>16</sup>

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14. Gulati and Krishnan, op. cit.

15. A.I.R. 1962 S.C. 1476.

16. G.S. Sharma *et al.*, "Working Paper on Law and Urbanisation in India," in Law and Urbanisation in India, (Indian Law Institute, 1969), p. 32-3.

Two economists are also in favour of making the right of pre-emption much more widely available. According to them whenever there is undervaluation, any person should have a right to purchase the property at a higher price and the successful pre-emptor must be required to deposit his total price with the government. The Government would then have the responsibility of paying the original 'buyer' the price or compensation payable to him. The government must also reserve a right to intervene if it has reason to believe that even the highest bid coming from non government parties falls significantly below the market value.<sup>17</sup> The effectiveness however of such a law will depend, to a great extent, on the vigilance of the administrative machinery. But it depends also on a clear notion of market value of property, an aspect which, as we shall see, cannot be quite easily determined.

The Kerala Legislature, realizing the growing tendency to undervalue documents amended the Kerala Stamp Act in an attempt to plug the lacuna. Following the example of Orissa a new section, S. 45 A, was inserted.<sup>18</sup> The Statement of objects and reasons for this section clearly reveals the eagerness of the Government to find out a remedy to the problem of under valuation. It stated:

"There is a growing tendency among the public to undervalue documents with the intention to defraud

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17. Gulati and Krishnan, op. cit., at 351.

18. By S. 6 of Act 17 of 1967.

the Government of Stamp duty. The law as it stands at present does not enable any authority to go into the question of undervaluation of documents and collect the real duty that should have been paid for the true consideration that has passed between the parties. In Orissa a step has been taken to plug the lacuna to the extent possible by amending the Indian Stamp Act in its application to the Orissa State, providing for a reference to the Collector for determining the true consideration passed between the parties and for determining the duty payable on the documents, whenever a registering officer has reason to believe that the value of the property or the consideration passed has not been truly set forth in the instrument. It is proposed to incorporate a similar provision in the Kerala Stamp Act, 1959."<sup>19</sup>

The Kerala amendment went one step ahead of the Orissa amendment. In addition to a provision for reference to the Collector by the registering officer,<sup>20</sup> the Collector was empowered to act suo motu.<sup>21</sup> He may within two years<sup>22</sup> from the date of registration of any instrument not already referred to him, call for

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19. Kerala Gazette Extra-ordinary, No. 102 dt. 26.6.1967.

20. S. 45 A (1)

21. S. 45 A (3). Suo motu means 'on his own motion.'

22. The period was originally six months, but extended to two years by Act 21 of 1972.

and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon. If after such examination he has reason to believe that the value or consideration has not been truly set forth in the instrument he may determine the value or consideration and the duty payable in accordance with the procedure provided for in the section and the deficient amount of duty shall be payable by the person liable to pay the duty.

It will be interesting to examine how far this section has achieved the object for which it was enacted. For this purpose it is necessary to ascertain: (1) the true value or consideration passed between the parties; (2) whether that amount has been stated in the document; and (3) if not, whether a reference has been made to the Collector by the registering authority under Section 45 A (1) or whether the Collector has exercised his quo potu power under section 45 A (3).

But the first step itself presents many difficult problems. It cannot be expected that the parties who have stated a lower price in the document would tell us the true price making them liable to a penalty under the Act. To base our conclusion on hearsay would be improper. If we arbitrarily fix the true value on subjective considerations it would not provide a criteria to judge the extent of undervaluation. That is why one is led to the concept of market value, a value that will be based on objective factors, with a view to determining

whether or not land has been undervalued and, if so, to what extent.

#### 1.4 Scope and Method of the Study

A micro-level study of this kind cannot aim at bringing out the full economic implications of this problem. The attempt here is only to pose the problem which demands further attention and study. Methods other than those contained at present in the Stamp act to curb effectively the practice of undervaluation of property must also be found out. The problem which is presented in this study is only one aspect of the bigger problem of making law effective. Whatever be the provisions in the Statute, lack of due diligence on the part of those who are entrusted with implementing it, will make the Statute a dead letter. In one case it may cause loss of revenue to the State, as in the present instance; but in another it may lead to more disastrous consequences.

Market value provides us with a yardstick to measure the extent of undervaluation. The various economic and legal aspects of the concept of market value are discussed in the next chapter. An attempt to analyse the different methods of valuation and an illustrative case study of the official method of valuation form the subject of Chapter III. Assuming that the officially determined value represents the market value we then proceed to assess the extent of undervaluation in Chapter IV, by comparing the value stated in documents with the 'official' market value. The final chapter contains conclusions and suggestions.

## CHAPTER II

### THE CONCEPT OF MARKET

#### VALUE

##### 2.1 Introduction

The extent of undervaluation can be assessed only with reference to the fair market value, because ordinarily it is the fair market value which passes hands between the transferer and the transferee. The determination of fair market value, therefore, becomes a prerequisite for our analysis of the extent of undervaluation.

##### 2.2 Market Value as an Economic Concept

The concept of market value presupposes the existence of a market, in the economic sense of the term.<sup>1</sup> We must, therefore, first direct our attention to the features of the real property market to see whether they satisfy the requirements of the perfect market of classical economics. This will also reveal the complex problems involved in determining the market value of real property, especially land.

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1. "Economists understand by the term Market, not any particular market place in which things are brought and sold, but the whole of any regions in which buyers and sellers are in such free intercourse with one another that the prices of the same goods tend to equality easily and quickly....Thus, the more nearly perfect a market is the stronger is the tendency for the same price to be paid for the same thing at the same time in all parts of the market." Marshall, Principles of Economics (1930) Book V, pp.324-25.

### 2.2.1 Unique Characteristics of Land and its Market

Land has certain unique characteristics which distinguish it from the other major factor of production and which cause its uses to respond in special ways to the stimulation of price shifts and institutional changes.<sup>2</sup> As Arthur P. Becker observes, "the supply of land, unlike that of durable goods and labour, is physically different because it is given, fixed, and inextractible and economically different because it has no cost."<sup>3</sup> The assumption that the physical supply of land is fixed, though undeniable, need not be taken as an economic fact. The economic supply of land, which has been defined as "the schedule of land which will enter particular uses in response to price at a given time and at given places," and which represents "the economic response to demand for land under existing cultural and technological conditions,"<sup>4</sup> is not so inelastic.<sup>5</sup> The elasticity in the supply of land can very well be illustrated by a situation where there is great demand for

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2. Roland A. Renne, *Land Economics* (1958), Preface, xi.

3. *Land and Building Taxes: Their Effect on Economic Development* (1969), p. 13-14.

4. Roland A. Renne, *op. cit.*, p. 28.

5. ".....area for economic purposes is always area for a specific use and when so considered is not a fixed expense, at least not until this particular use has absorbed the entire earth's surface." Ely R.T., and G.S. Fahrwein, *Land Economics* (1940), p. 54.



urban land due to a growing population and economic base. As a consequence, the price of land will rise. If this rise continues for a long period it will be counteracted by (a) converting 'fringe land' into urban land;<sup>6</sup> and (b) building vertically on land already in urban use. Similarly a sustained decline in demand for urban land would result in conversion of urban land to rural use. In general we find that the economic supply of land may be increased by the following four methods.<sup>7</sup>

1. New areas previously unused can be brought in to production.
2. Areas in use can be utilised more intensively.
3. Certain drawbacks or hindrances to the complete or fullest possible use of the area already utilized may be removed, thus permitting greater output. This may be called "economising land utilisation."
4. Consumption of products of land may be controlled so that people will desire what the earth can produce most readily.

But it has to be pointed out that still "the real estate market is notoriously slow in making adjustments in total supply in response to changes in demand."<sup>8</sup>

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6. Here, "for any individual entrepreneur the supply of land is only limited by the price he is willing and able to pay" Davenport H.J., *The Economics of Enterprise* (1913), p. 169.

7. R.T. Sly and E.W. Morehouse, *Elements of Land Economics* (1924), pp. 63-67.

8. Richard O. Natcliffe, *Real Estate Analysis* (1961), p. 230.

### 2.2.2 Improvements

In bringing about qualitative changes in the land available for use, improvements play a very important role.<sup>9</sup> These may broadly be divided into off-site improvements and on-site improvements.<sup>10</sup> The term off-site improvements or improvements in common is applied to the kind of physical modifications which are made for the benefit of real estate in off-site locations and where the improvements serve an entire neighbourhood or community. Examples of such improvements are street and road system, public sewage and water systems, facilities for electricity, gas, telephone etc. On-site improvements include construction of buildings, levelling and fencing and such other activities which are directly beneficial only to the land in question. These improvements, especially

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9. It has been observed that, "there is no meaningful way, in theory as well as in practice, of separating the value of the site from the value of improvements if the site is not a vacant one." See, Ernest M. Fisher and Robert M. Fisher, *Urban Real Estate* (1954), pp. 54-57. According to these authors the demand for Urban land is derived from the intensity and character of the demand for structures in general, and the character of improvements on particular sites shapes the demand for the sites themselves. ~~But another economist objects sites shapes the demand for the sites themselves.~~ But another economist objects to this conclusion because it "rests on a rather elementary fallacy, a failure to distinguish between the value of land in general which is surely derived from the demand for improvements and the value of one specific site." Dick Netzer, *Economics of the Property Tax* (1966), p. 199.
10. Ernest M. Fisher and Robert M. Fisher, op. cit., pp. 55 - 58.

buildings, enhance the value of land considerably. The value-generating characteristics of a building are:

1. Functional efficiency - the adaptation of the structure to the activities for which it is to be used.
2. Durability - the physical qualities of the structure which determine how long it can continue to render useful services.
3. Attractiveness - the aesthetic qualities of the structure.

### 2.2.3 Locational Factors

Apart from these physical characteristics, there are locational factors which influence the value of land.<sup>11</sup> There are three basic elements in the concept of location.

- (1) Convenience: Measured in the disutilities (time, cost, aggravation) of movement of persons or goods from the site to other points to which movement is desirable or essential.
- (2) Favourable Exposure: Exposure to view, sun and breeze, and nearness to centres of prestige and fashion.

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11. "In Urban areas, particularly, the quality of location or situs is an important determinant of economic value." Dorau, H.B; and A.G.Hinsan, Urban Land Economics (1928), p. 167.

- (3) Unfavourable Exposure: The degree of exposure to offensive influences which diminish the use - value of real estate such as unsightly views, noise, smoke, smells and disturbance.<sup>12</sup>

Through land is fixed and the latitude and longitude of the site do not change, the locational factors outside its borders are constantly changing. An evaluation of locational benefits must, therefore, take account of the probable future changes in all of the factors which influence the benefits of the site for the intended use.

#### 2.2.4 Features of the Real Estate Market

Having discussed the physical and locational factors which distinguish land from other kinds of property, we may now proceed to examine the main features of the real estate market. The real estate market is distinct from other markets primarily because here no two transactions are exactly identical. The difference originates from two factors:

- (1) Each property is structurally and locationally different and thus subject to certain special influences.
- (2) The parties to each transaction are individuals with distinct personalities, objectives, motivations, business judgment, family background and financial circumstances. Given the same

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12. Ratcliffe, op. cit., pp. 63-64.

set of facts each individual may arrive at a somewhat different conclusion.<sup>13</sup>

#### 2.2.5 Functions of the Real Estate Market

Nevertheless the real estate market performs the basic market function of exchange, bringing about the production and allocation of facilities in accordance with the preferences and desires of users and their financial abilities. This results in:-

- (1) Price establishment: Generally the forces of demand and supply in the market will tend to establish the same price for similar properties. But here, due to lack of standardization and other imperfections, the law of single price is only partially operative.
- (2) Distribution of Existing space: The market mechanism acts to distribute the existing supply among the bidders for it generally is determined by the amount bid.
- (3) Adjusting the supply of space in quantity and quality: Qualitative changes are introduced in the available space and new supply is added to the market in response to changes in demand generated by the market mechanism.

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13. See Batcliffe, op. cit., pp. 228-29.

- (4) Determination of land use: Competitive bidding among investors leads to the allocation of a given site to the most efficient and productive exploitation.

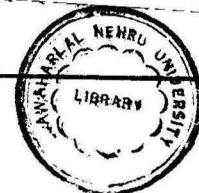
#### 2.2.6 Demand Factors

For a proper understanding of the real property market, it is necessary to consider also the demand factors. The demand for land rises from various direct and indirect uses to which it can be put. Direct uses include those in which land itself is a consumption good, and indirect uses include those in which land is used as a means of producing goods or services. In the latter case, the demand for land is a derived demand, which springs from the demand for the goods and services produced.<sup>14</sup> The most important single factor which shapes the demand for land, according to Ratcliffe, is the economic base, which means the entire combination of economic activities and resources which are the source of income for its inhabitants in the various forms of wages, salaries, dividends, royalties, pensions, rents, insurance or annuity payments, interest, or profits.<sup>15</sup> The rate of growth or decline, the nature of growth and the stability of the economic base are relevant in determining the demand for land.

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14. Roland R. Renne, op. cit., p. 29.

15. Ratcliffe, op. cit., p. 247.



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In the long run, demand for land rises and falls with demographic changes. The age distribution of the population and the proportion of married people to single people are also important demand factors. Movement of population from one place to another will also affect land values in both the places.

Changes in credit policy also influence demand for land. Better credit facilities result in increased land values because the buyer is "able to carry a higher-priced house, and the seller is in a bargaining position which enables him to sell the same quality house at a higher price."<sup>16</sup> According to Weizer and Hoyt, "the amount that a prospective buyer is prepared to bid for a piece of real estate depends to a marked degree on the amount he can borrow."<sup>17</sup> The influence of credit facilities on the property market is more evident in the field of residential construction.<sup>18</sup>

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16. Ernest M. Fisher, *Urban Real Estate Markets* (1957), Quoted in Ratcliffe, *op. cit.*, p. 254. Ratcliffe calls urban land credit an "important catalyst." *Urban Land Economics* (1949), p. 107.

17. *Principles of Real Estate*, (1960), p. 107.

18. "Residential construction is clearly an area in which the amount of activity depends on the availability of finance." Roland I. Robinson, *Money and Capital Markets* (1964), p. 35.

To illustrate, the great increase in the value of land in Trivandrum in recent years can mainly be attributed to the liberal credit facilities for house construction provided the Government and various financing agencies like the Housing Board, Life Insurance Corporation and the Nationalised Banks.

The control measures introduced by the State may also have their impact on the demand for land. The State may regulate and restrict the holding of land as well as its use. Very often, such measures will lead to speculative activity. Some restrictions on land use may slacken the demand for land. If, for instance, the Government prohibits the construction of multi-storied buildings within a radius of five kilometres of the air port, the demand and consequently the value of land comprised in the prohibited area will fall. In the present era, when the role of the State as regulator<sup>19</sup> is becoming more and more prominent, State control exerts a decisive influence on changes in land values.

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19. See W. Friedmann, *The State and the Rule of Law in a Mixed Economy* (1971), pp. 50-51.



### 2.2.7 Imperfections of the Real Estate Market

Though the basic economic laws of the real estate market are essentially the same as those of a commodity market, the former market is likely to be far more imperfect and "its imperfections stifle, distort and delay the reactions which in the perfect market would be prompt and untrammelled."<sup>20</sup> Some of the major imperfections arise from:

- (1) The heterogeneous nature of each parcel of real estate which makes comparison difficult.
- (2) The lack of a sufficient number of transactions relating to properties which are generally similar creates further difficulties in establishing a market price.<sup>21</sup>
- (3) Absence of adequate information systems always creates difficulties in obtaining accurate information offered and demanded at any given time.<sup>22</sup>

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20. Ratcliffe, op. cit., p. 243.

21. "In any one year only a small fraction of real estate parcels are sold. The whole set of real estate valuations, then, must rest on a small base of actual market transactions." C. Lowell Harriss, Valuation of Property for Taxation, Public Finance, Vol. IX (1954) P. 24 at 26.

22. "For real estate especially, getting data on selling prices is far from easy; at least in the United States. There is no assurance that the figures reported for public records are accurate." Lowell Harriss, op.cit., at p. 28. We have the same problems in India and that is our main point of inquiry in Chapter IV, infra.

- (4) The long period required for planning, developing new sites, and building new structures delays the response to pressures of demand.
- (5) Similarly supply cannot be reduced substantially when demand falls off.
- (6) Lack of experience, understanding and awareness of market trends on the part of the majority of the buyers and sellers of real property delays action in response to market trends.

These imperfections result in distortions of the real estate market, affording a better room for subjective elements in determining the market value. So the inevitable conclusion one is apt to reach is: ".....because of the lack of standardization among different land units, the relative infrequency of sales of some types and grades of land in many localities, and the disorganized local character of the real estate market, individual judgment is more influential in the valuation of land than in that of standardized goods in a better-organized market." 23

While it is perfectly in order, in fact necessary, to understand clearly the imperfections from which the market for landed property suffers, it must be made quite clear that in the context of this study, what we are interested in is not the valuation of a guess price of property

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23. Encyclopaedia of Social Sciences, Vol. IX, p. 137.

in a metaphysical perfect market free of all distortions, but in the extent of understatement, if any, of valuation for purposes, largely of taxation; compared to the valuation that can be said to obtain in a market suffering from all imperfections. To form an idea of understatement in any particular case we must have a clear idea of the valuation that our imperfect property market places on the particular piece of property. It is for this purpose that we rely in compensation fixed for properties acquired by Government. As a first step, therefore, let us be clear about how compensation is determined to make sure that compensation amounts are generally close to market valuation. Otherwise our estimate of undervaluation may be open to question.

#### 2.2.8 Methods of valuation

There are two principal methods employed in the valuation of land, viz: the Comparison method and the Income Capitalization Method.

(1) The Comparison Method: Here, known or recognised values of other comparable land is based for determining the value. For this purpose, the land has to be graded on the basis of its features and then actual sale prices of lands whose features are known are used for evaluation. This method suffers mainly from four limitations: (1) Land values fluctuate widely during depressions. The use of market values may not represent the actual value of the land;

(2) The lack of standardization in the land market makes classification and comparison a very difficult process;  
(3) Only a small fraction of real estate is sold in a year. So the valuation must rest on a small base of actual market transactions;<sup>24</sup> and (4) Each transaction may have its peculiar personal elements, making its acceptance as a standard rather weak.<sup>25</sup> This method may also not give adequate consideration to the future potentialities of the land.

(2) The Income Capitalization Method: This method is based on the assumption that the value of land is based on its ability to produce an income. In actual application it consists of- (1) an estimate of productivity and net income; (2) choice of a capitalization rate; and (3) adjustments to capitalized value to account for intangible features. The following defects of this method have been pointed out:

- (1) The net income to be derived from land cannot ordinarily be estimated accurately from data available.
- (2) Arbitrary choice of a level of prices on which to determine estimated income.
- (3) A high proportion of land value is made up of non-income factors, or what might be called "the amenities" which are psychological factors whose income value can only roughly be estimated.

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24. See Supra (note 21)

25. " Sale prices in this unorganized condition of the land market may be misleading unless unusual care is taken to make sure what was in the minds of the buyers and sellers." W.G. Murray, Farm Appraisal (1940), p. 184.

(4) The choice of a suitable capitalization rate.

In view of the limitations of the above two methods, a combination method, which will incorporate the advantages of both, has been suggested.<sup>26</sup> According to the American Society of Farm Managers and Rural Appraisers, "the use of both the income capitalization and comparative approaches to value is necessary in every appraisal and one should not be emphasized to the minimization or exclusion of the other"<sup>27</sup> In using the combination of both methods, however more weight should be given to the one better adapted to the specific area.<sup>28</sup>

**2.3 Market Value as a Legal Concept - Compensation for Compulsory Acquisition**

In the context of acquisition of landed property by Government, the combination method, suggested above, would be the best approach because it not only avoids arbitrariness on the part of Government but also eliminates scope for wild demands by the owners of land under acquisition. There can, otherwise, be always scope for owners of land under acquisition to claim 'fancy prices' for sentimental

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26. Renne, op. cit., pp. 234-5.

27. Journal of the American Society of Farm Managers and Rural Appraisers, Vol. II No. 2, p. 91 quoted in Renne, op. cit., p. 238.

28. Murray, op. cit., p. 185.

and other subjective considerations regardless of the market value of a piece of real estate.

When land is acquired for a public purpose by Government under the Kerala Land Acquisition Act,<sup>29</sup> the practice followed is to place greater reliance on the comparison method to fix the market value for determining the quantum of compensation. Such acquisition is more in the nature of a purchase of private property by Government, though an element of compulsion supported by the doctrine of 'eminent domain'<sup>30</sup> is also present.

### 2.3.1 Statutory Provisions

Section 25 of the aforesaid Act enumerates the following as matters to be considered in determining the quantum of compensation to be paid for the land acquired by Government:

- (1) The market value of the land at the date of publication of the notification;
- (2) the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may

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29. Act 21 of 1962.

30. "The power of eminent domain is the legal capacity of Government to take private property of individuals for a public use upon the payment of just compensation. Eminent domain is the superior dominion of the State over all the property within the State." Willis, Constitutional Law of the United States, 224. Judicial opinion in India is of the view that this doctrine is embodied in Article 31 of the Constitution. See State of Bihar v. Kameshwar Singh (1952) A.C.R. 869.

- be on the land at the time of the collector's taking possession thereof;
- (3) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
  - (4) the damage, if any, sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable in any other manner or his earnings;
  - (5) if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and
  - (6) the damage, if any, bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6<sup>31</sup> and the time of the Collector's taking possession of the land.

In the next Section, ie, section 26, of the same Act are listed matters to be neglected in determining compensation. They are: (1) the degree of urgency which has led to the acquisition; (2) any disinclination of the person interested to part with the land acquired;

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31. A declaration by Government that a particular land is needed for a public purpose.

(3) any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

(4) any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

(5) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

(6) any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put; or

(7) any outlay, or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under sub-section (1) of section 3.<sup>32</sup>

### 2.3.2 Judicial Guidelines

Almost in all cases where the owner does not accept what the Government determines as compensation for land acquired for public purposes, the inadequacy of compensation becomes a matter of dispute between the government and the

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32. A notification that a particular land is needed or is likely to be needed for any public purpose.



individual and has to be referred to a court of law.<sup>33</sup>

A careful analysis of a large number of decisions by the courts on disputes thus referred to them shows that a number of considerations are borne by them in mind in determining compensation for land acquired by Government. The principal points that can be said to emerge in this context are:-

(1) Search for Proper Market Valuation: The Courts have always tried, first to find out and fix the market value of the acquired land. In this connection the courts take into consideration the values shown in sale deeds pertaining to properties in the same area. For deciding upon compensation, the rule followed is that the highest value shown in the sale deeds relied on by Government should be preferred to the rest unless there are strong circumstances justifying a different course.<sup>34</sup> One such circumstance, for instance, is when the sale deed relates to a small piece of land. The Courts have made it clear that "value fetched for small plots

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33. Section 20(1) of the Kerala Land Acquisition Act 1961 reads: "Any person interested who has not accepted the award made, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested."

34. (1968) 2 S.C.J. 369.

of land cannot be applied to lands covering very large extent<sup>35</sup> though the argument that the large area, within or near a Municipal jurisdiction, undivided in plots would fetch less price than the small divided plots has not been accepted.<sup>36</sup> However, when a portion of the land is acquired and a large part left out, the Courts concede that there could be a diminution in the value of the land that is left out for which some compensation should be allowed.<sup>37</sup> The Courts do not take cognizance of the transaction, in respect of a property acquired, with the knowledge of acquisition proceedings.<sup>38</sup> Evidence relating to the rise in prices in the area is, however, admitted in determining the current value of a property.<sup>39</sup>

(2) Search for Potential Value: Apart from evidence about values from records of transactions the Courts have taken into account not only the use to which the acquired land is currently put, but also "the uses to which it is reasonably capable of being put in future."<sup>40</sup> However, the Courts have made it clear that "the use of land after acquisition is not a criterion for increase in value," for purposes of determining compensation.<sup>41</sup>

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35. A.I.R. 1971 S.C. 2015.

36. A.I.R. 1957 S.C. 202.

37. (1972) I S.C.S.R. 397.

38. A.I.R. 1958 Kerala 166.

39. A.I.R. 1971 S.C. 1253.

40. I.L.R. (1958) Kerala 209; A.I.R. 1964 Orissa 12.

41. 1958 K.L.R. 1059.

(3) Search for Capitalized Value: Courts also look for capitalized value of property as corroborative evidence to determine compensation. Where landed property is rented out, the Courts take into account the net rental value and capitalise the same to determine compensation.<sup>42</sup> At the same time, Courts have taken the view that in the case of agricultural land the land under personal cultivation and the land cultivated by tenants cannot be fully equated and that therefore a uniform measure in awarding compensation cannot be adopted.<sup>43</sup>

It is evident that both the Government and the Courts have, in order to determine compensation relied considerably, if not altogether, on market valuation of landed property. Therefore, if in our search for the extent of prevalence of under valuation of landed properties, we rely on compensation worked out for land acquired by Government, we should be not far off the mark.

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42. (1962) K.S.T. 811.

43. A.I.R. 1973 B.C. <sup>701</sup> 4223.

## C H A P T E R    I I I

### V A L U A T I O N   F O R   C O M P E N S A T I O N

#### A   C A S E   S T U D Y

#### 3.1 Introduction

The method followed in determining the market value of land acquired for a public purpose, under the Kerala Land Acquisition Act, is, as stated above, very largely the comparison method with all its drawbacks.

The process of valuation begins after the publication of a notification under section 3(1) of the aforesaid Act in the Official Gazette, that a particular land is needed or is likely to be needed for a public purpose.

The real basis of valuation is the preliminary valuation statement prepared by the Village Officer of the locality or a Revenue Inspector deputed for this purpose. The Land Acquisition Officer, before finalising the valuation, is legally obliged to inspect the land. He has then to certify that he is satisfied as to the correctness of the details in the mahazar<sup>1</sup> and the preliminary valuation statement.<sup>2</sup>

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1. A detailed report prepared by the Village Officer or Revenue Inspector after inspecting the locality.
  2. Rule 10(3), Kerala Land Acquisition Rules.

This statement of valuation along with a Note to Award, enumerating in detail the basis for valuation, is sent to the Collector, or the Board of Revenue, for approval and for passing the award.

The method followed for fixing the market value of the land to be acquired is to consider the value of similar lands situated in the same area as stated in recent sale deeds. For this purpose, (a) an index of sale deeds executed within a period of 3 years prior to the date of publication of the notification is prepared; (b) each document is examined to find out the similarities and dissimilarities with the land proposed to be acquired; (c) the highest value shown in any document for similar land is taken as the market value, unless there are compelling reasons for fixing a higher or lower market value and (d) the value of improvements, like trees, buildings and other structures is then taken into consideration separately.

Thirty cases of land acquisition by the Deputy Collector for Land Acquisition, Trivandrum, during 1973-74 were located and taken up for close study.<sup>3</sup> Each case relates to the acquisition of land owned by a single individual or a group of individuals (eg. a family). For the purpose of our

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3. The year 1973-74 was chosen because it is the most recent year for which all the details are available. The land acquisition files after that period are at different stages of disposal and not readily available for study.

analysis, these thirty cases are divided into nine categories based on the purpose and place of acquisition. In Table I below, is given the information on area, purpose and place of acquisition separately for each of the nine categories.

TABLE 1

Category-wise Classification of thirty land acquisitions.

Sl.No.	No. of cases	Area in Ares	Purpose	Place
1	2	3	4	5
1	15	205.00	Fishermen's Colony	Poonthura
2	1	16.00	Panchayat Market	Mannanthala
3	1	157.00	Housing Scheme	Ambalamukku
4	1	46.94	Expansion of Airport	Trivandrum
5	1	3.74	Municipal Market	Neyyattinkara
6	1	4.45	Public Market	Kodangavila
7	1	92.27	High School	Kaniyapurem
8	6	92.27	Railway and godown	Kashakutten
9	3	12.61	Water supply	Kovalam.

Note: 100 Ares = 1 Hectare (2.47 Acres)

The method of valuation in each category is discussed below.

### 3.2 Acquisition of Land for Fishermen's Colony, Poonthura

The land acquired for the purpose of constructing houses for fishermen at Poonthura, a few miles from Trivandrum was subdivided into three categories for the purpose of valuation.

- Category
- I. Land having road frontage and immediate road approach.
  - II. Land having road frontage, but away from main Centre.
  - III. Land having no direct road access.

An list of twelve sale deeds executed at the Sub-Registrar's Office in Trivandrum was prepared. The lowest land value stated in the documents worked out to Rs. 33 per are and the highest value worked out to Rs. 1667 per are. The details of the documents considered are given in Table 2.

It can be seen from Table 2 that 9 out of 12 (75%) sale deeds had to be rejected. The grounds of rejection were two: (1) undervaluation, and (2) dissimilarity. Only two of the nine (22%) rejections were on ground of dissimilarity. The remaining seven (78%) rejections were on ground of undervaluation.

On the basis of the three sale deeds which were considered, the following values were fixed:

Category I	Rs. 1500 per are
II	Rs. 1350 per are
III	Rs. 1000 per are

It is significant to note that while the values in the above three sale deeds ranged from Rs. 500 to Rs. 1667 per are, the values fixed for compensation purposes ranged from Rs. 1000 to Rs. 1500 per are. The lowest value fixed is twice the

TABLE 2

Sale deeds considered for fixing compensation value for  
Poonthura Land Acquisition

Sl. No.	Document No.	Extent of area (in ares)	Total cost Rs.	Value of improvements Rs.	Value of Land (excluding improvements) Rs.	Rate Rs. per Are	Remarks
1	2	3	4	5	6	7	8
1	2542/70	1.6	1000	640	360	225	U V R
2	515/71	0.8	200	200+	—	—	U V R
3	165/71	3.2	2000	400	1600	500	SF/UV
4	3112/71	6.0	1500	1300+	200	33	U V R
5	1954/71	1.6	3000	800	2200	1375	S F
6	1955/71	8.0	5000	400	4600	575	U V R
7	2591/72	4.8	12000	10000	2000	417	U V R
8	2256/72	1.6	2000	3000	—	—	U V R
9	1289/72	3.2	400	120	280	87	U V R
10	1914/72	12.8	4000	—	4000	—	D R
11	269/72	7.2	16000	4000	12000	1667	S F
12	2958/72	0.8	1500	—	1500	1875	D R

(Key to Tables 2 - 10: S F - Similar; followed  
UV - Under valuation; R - Rejected D - Dissimilar;  
SC - Special Case; )



lowest in the sale deeds. This shows that even where the authorities accept the sale deeds as relevant for purposes of determining compensation values, they felt obliged to fix the values considerably higher, presumably on the underlying assumption that the sale deeds still under stated the value. In the case of D-No. 165/71 (Sl.No. 3, Table 2) which falls in Category III, there is undervaluation to the extent of 50%.

### 3.3 Acquisition of Land for Panchayat Market, Mannanthala

In this connection, ten sale deeds were considered for fixing the value of land for purposes of compensation. Details regarding these ten sale deeds are given in Table<sup>3</sup>.

TABLE 3

#### Sale deeds considered for fixing compensation value for

<u>Mannanthala Land Acquisition</u>							
Sl. No.	Document No.	Extent of area (in ares)	Total cost Rs.	Value of improvements Rs.	Value of Land (excluding improvements) Rs.	Rate per Acre Rs.	Remarks
1	2	3	4	5	6	7	8
1	3993/69	8.5	1000	—	1000	—	DR
2	1331/69	4.0	800	—	800	—	DR
3	3262/69	7.6	2600	—	2600	—	DR
4	3189/70	0.30	2905	—	2905	—	DR
5	207/71	15.2	2000	—	2000	—	DR
6	2893/71	1.2	1500	1500	—	—	UVR
7	2895/71	2.4	600	600	—	—	UVR

TABLE 3 (Contd.)

1	2	3	4	5	6	7	8
8	3206/71	6.8	8925	—	8925	—	DR
9	3780/71	2.4	1000	150	850	354	SE
10	604/72	5.2	2000	—	2000	—	DR

Of the ten sale deeds considered, 9 (ie, 90%) had to be rejected, 7 on the ground of dissimilarity and 2 on the ground of under-valuation. Therefore, valuation had to be based on only one sale deed. In this one case, the land was considered similar to the land under acquisition and also the value of land was not found to be significantly understated. Allowing a small enhancement, viz. Rs. 16 per are, an account of efflux of time, the value for purposes of compensation was fixed at Rs. 370 per are. It should be added that, of the ten sale deeds while three similar to the land under acquisition, only one out of these three (33%) was found to have not significantly understated value.

#### 3.4 Acquisition of Land for Kerala State Housing Board, Ambalassukku

Land was acquired for a housing scheme of the Kerala State Housing Board at Ambalassukku. This land is situated by the side of the Ambalassukku - Kuravankonam Road, within the territorial limits of the Trivandrum City. Thirteen sale deeds were considered for the purpose of valuation. They are listed in Table 4. Only two sale deeds, viz. Nos. 1 and 6, were considered reasonable in price and similar. Three were rejected on the

ground of dissimilarity and four on the ground of undervaluation.

TABLE 4

Sale deeds considered for fixing compensation value for  
Ambalamukku Land Acquisition

Sl. No.	Document No.	Extent of area (in ares)	Total cost Rs.	Value of improvements Rs.	Value of Land (excluding improvements) Rs.	Rate per are Rs.	Remarks.
1	2	3	4	5	6	7	8
1	4489/67	2.40	3500	150	3350	1458	SP
2	843/66	4.86	4000	—	4000	817	UVR
3	3012/65	1.92	2000	—	2000	1015	DR
4	1027/66	2.02	9000	7500	1500	743	UVR
5	113/68	2.02	5000	230	4770	2361	SCR
6	2247/67	17.00	25000	600	24400	1438	SP
7	591/67	9.51	24000	15000	9000	946	UVR
8	3119/66	3.24	5600	—	5600	1706	SCR
9	3953/67	2.02	4000	100	3900	1930	SCR
10	3455/66	2.02	3750	—	3750	1757	SCR
11	3811/65	3.64	5600	—	5600	1538	DR
12	3261/67	3.84	5000	—	5000	1250	UVR
13	1982/66	11.20	11200	—	11200	1000	DR

Four sale deeds found to be similar to the land under acquisition were rejected on the ground that the plots of land were small, purchased for residential purposes. The claim of the owner of the land under acquisition for a higher value based on these sale deeds was rejected by the Court and the Government's valuation was upheld.<sup>4</sup>

4. Land Acquisition Reference No. 147/73.

It is interesting that in the case of four sale deeds rejected on the ground that they related to small plots, the area involved in each case was equal to or higher than one of the two sale deeds which formed the basis of the compensation value fixed by the authorities (See No. 1, Table 4)

Moreover, although the area under acquisition was sufficiently large (157 ares) of residential land within city limits, no attempt seems to have been made to sub-divide the area acquired and to classify different parts thereof according to the location etc., as was done in the Poonthura acquisition, and to fix different values for the different categories.

In the context of our study it is important to note that of the eight (out of 11) rejected sale-deeds where plots of land involved were similar, half were found to have significantly understated values while the other half, rejected on grounds of smallness, had stated significantly higher values.

### 3.5 Acquisition of Land for Aerodrome, Trivandrum

An area of 46.94 ares of Land, lying on the eastern side of the All Saints College - Shangumukhom Road in Trivandrum City was acquired for the expansion of the Trivandrum airport.

To fix the market value of the land for the purpose of compensation, nine sale deeds were considered (Table 5) of which seven were rejected, six on the ground of undervaluation and one on the ground of dissimilarity. Two sale deeds, viz: nos. 3 and 8 were officially stated to be similar and

reasonable in price. The value in one was Rs. 903 per are and in the other Rs. 1575 per are. The plot of land involved in the former had no road frontage. Since the land under acquisition had road frontage, the latter which had road frontage was taken as the basis and value was fixed at Rs. 1565 per are.

TABLE 5.

Sale deeds considered for fixing compensation value for  
Aerodrome Land Acquisition

Sl. No.	Document No.	Extent of area (in ares)	Total cost Rs.	Value of improvements Rs.	Value of land (excluding improvements) Rs.	Rate per Are	Remarks.
1	2	3	4	5	6	7	8
1	2868/69	4.0	2000	—	2000	488	UVR
2	361/70	3.6	900	—	900	250	UVR
3	914/70	12.9	12800	848	11952	903	SF
4	1078/70	4.0	3000	—	—	—	DR
5	1363/70	4.0	3000	—	3000	750	UVR
6	2768/70	4.0	3000	—	3000	750	UVR
7	2642/71	4.5	3300	—	3300	733	UVR
8	3066/71	4.0	6300	—	6300	1575	SF
9	2526/72	4.0	4000	513	3487	872	UVR

In this case, the owner of the land claimed a higher compensation on account of increase in market value due to lapse of time. The Court allowed the claim and granted an increase of nearly 20%, fixing the value at Rs. 1875 per are because more than two years have elapsed between the date of the sale deed which was relied on and the date of notification for

acquisition.<sup>5</sup>

### 3.6 Acquisition of Land for Municipal Market, Neyyattinkara

Land lying on the side of the National Highway, near the Tourist Bungalow, Neyyattinkara, nearly 25 kilometres from Trivandrum, was acquired for the purpose of locating a municipal market. Of the seven sale deeds considered (Table 6), six were rejected; five as dissimilar and one as undervalued. The sale deed which was undervalued was found to be a transaction between relatives, and the value stated was even less than the value of improvements.

TABLE 6

#### Sale deeds considered for fixing compensation value for Neyyattinkara Land Acquisition

Sl. No.	Document No.	Extent of area (in acres)	Total cost Rs.	Value of improvements Rs.	Value of Land (excluding improvements) Rs.	Rate per Acre Rs.	Remarks.
1	2	3	4	5	6	7	8
1	2733/70	4.0	2500	250	2250	565	DR
2	719/70	0.73	500	500	—	—	WR
3	1256/71	2.58	3000	600	2400	930	WR
4	5184/68	2.54	3750	—	—	—	DR
5	436/69	7.36	3500	—	—	—	DR
6	5244/68	2.02	1000	100	900	—	DR
7	1016/71	0.91	5000	550	4450	4900	DR

5. Land Acquisition Reference No. 184/74

The value stated in one document, viz. No. 3, was found to be reasonable and the same value, i.e., Rs. 930 per acre, was fixed for the purpose of awarding compensation. But the owner of land does not seem to have accepted this as the fair market value, for he has pressed a claim for higher compensation which was referred to the Court. The case is still pending in the Court.

### 3.7 Acquisition of Land for Public Market, Kodangavila

An area of 4.45 acres of land in Neyyattinkara Village was acquired for opening a public market at Kodangavila, a small village near Neyyattinkara. Of the ten sale deeds considered for the purpose of fixing the market value, four were rejected as dissimilar. (Table 7) All the other six sale deeds were found to be similar and followed as basis. The value stated in these sale deeds varied from Rs. 235 to Rs. 310 per acre. Taking into account lapse of time, the value was fixed at Rs. 320 per acre, i.e. slightly higher than the highest amount in the sale deeds. No claim for higher valuation was made. It has to be pointed out that no case of significant undervaluation was found in this case.

TABLE 7

Sale deeds considered for fixing compensation value for  
Kodanavilla Land Acquisition

Sl. No.	Document No.	Extent of area (in ares)	Total cost Rs.	Value of improvements Rs.	Value of land (excluding improvements) Rs.	Rate per aro Rs.	Remarks.
1	2	3	4	5	6	7	8
1	3653/70	4.0	1300	50	1250	310	DR
2	667/69	4.0	1000	60	940	235	DR
3	3162/71	2.8	700	—	700	250	DR
4	3263/69	4.0	1800	600	1200	300	DR
5	736/71	6.0	2000	—	—	—	DR
6	3479/70	8.0	2000	—	2000	250	DR
7	505/69	6.0	1875	—	1875	310	DR
8	551/70	4.0	2000	—	—	—	DR
9	182/70	8.0	2500	—	—	—	DR
10	711/69	2.4	1500	—	—	—	DR

**3.8 Acquisition of Land for Muslim High School, Kaniyapuram**

For the purpose of constructing a stadium for the Muslim High School, Kaniyapuram, 92.27 ares of land was acquired in Pallipuram Village in Trivandrum District. Of the six sale deeds considered (Table 8) for fixing the market value for the purpose of compensation, five were rejected. Only in one out of these 5 cases (20%) was found to be significant undervaluation. The remaining 4 were rejected on the ground of dissimi-



larity. In the one document which was accepted as the basis for valuation, the value was Rs. 380 per are. The same value was fixed for the purpose of compensation also. No claim for higher compensation was advanced by the owner.

TABLE B

Sale deeds considered for fixing compensation value for  
Kaniva gram land acquisition

Sl. No.	Document No.	Content of area (in arec)	Total cost Rs.	Value of improvements Rs.	Value of land (excluding improvements) Rs.	Rs. per are	Remarks
1	2	3	4	5	6	7	8
1	2871/69	2.4	600	—	—	—	DR
2	2096/70	4.0	700	—	—	—	DR
3	238/69	20.0	8000	300	7700	380	DR
4	2273/70	8.9	2000	150	1850	208	DR
5	2213/71	14.1	900	—	—	—	DR
6	2065/71	14.4	7897	—	—	—	DR

3.9 Acquisition of Land for Railways and Food Corporation  
of India, Kanhakuttan

Though these acquisitions were made for two different purposes, one for constructing a railway loop and the other for constructing a godown, they were examined together by the authorities because the lands are lying adjacent and the same

batch of sale deeds were considered for fixing the value in both cases.

TABLE 9

Sale deeds considered for fixing compensation value for  
Kazhakuttom Land Acquisition

Sl. No.	Document No.	Extent of area (in area)	Total Cost Rs.	Value of improvements Rs.	Value of Land (excluding improvements) Rs.	Rate Rs. per Acre	Remarks
1	2	3	4	5	6	7	8
1	1513/69	20.22	5000	—	5000	247	UVR
2	568/71	5.26	5000	500	4500	852	SF
3	3947/70	4.40	2000	—	—	—	DR
4	2334/69	7.50	2500	—	—	—	DR
5	278/71	10.11	8125	280	7845	785	SF
6	811/71	3.40	3000	—	—	—	DR
7	3167/71	4.05	2000	190	1810	452	UVR
8	3311/71	7.68	5625	—	—	—	DR
9	3516/71	5.26	3500	—	—	—	DR

The total area of land under acquisition was 93.67 area in Attipra Village of Trivandrum Taluk. Of the nine sale deeds considered for determining the compensation value, seven (78%) were rejected (Table 9) The Major part of rejections, vis. 5 out of 7 (71%) were an account of dissimilarity and 2 out of 7 (29%) were an account of undervaluation. Two sale deeds were accepted as relating to sale of land similar to the land

under acquisition and representing reasonable prices. The higher of these prices, viz. Rs. 852 per are, was fixed as the value for the purpose of compensation:

### 3.10 Acquisition of Land for Kovalam Water Supply Scheme

Land lying at a distance of 150 feet south of Thiruvallom junction on the Trivandrum - Kovalam road was acquired for constructing a pumping station for the Kovalam Water Supply Scheme.

Twelve sale deeds were considered for the purpose of fixing the compensation value (Table 10). Of these, 9 were rejected; four on account of dissimilarity and five on account of undervaluation. Three sale deeds were accepted as relating to the sale of similar land and representing reasonable prices. The prices stated in these documents were in the range of Rs. 710 to Rs. 2500 per are. The land was classified into three categories: (1) having road frontage; (2) no road frontage but having access to the road; and (3) lying far away from the road. Taking the above sale deeds as basis, the following values were fixed for the purpose of compensation. (1) Rs. 2720 per are; (2) Rs. 900 per are; and (3) Rs. 855 per are. No sale deed relating to land quite similar to categories (2) and (3) were found among those considered. One which was almost similar to land in category (3) was No. 4 in the Table. Allowing for the special advantages, values were fixed at Rs. 855 and Rs. 900 per are for categories (2) and (3). In fixing the value of land in category (1) a 9% increase was allowed on the

highest value in sale deed (No.12) on account of a lapse of three years. Government valuation has not been disputed by the owners.

TABLE 10

Sale deeds considered for fixing compensation value for  
Kovalam Land Acquisition

Sl. No.	Document No.	Extent of area (in ares)	Total cost Rs.	Value of improvements Rs.	Value of Land (excluding improvements) Rs.	Rate Rs. per Acre	Remarks
1	2	3	4	5	6	7	8
1	9/69	3.34	1000	—	1000	300	UVR
2	193/69	9.37	4000	—	—	—	DR
3	1099/69	1.82	1000	300	700	384	UVR
4	1121/70	5.1	4000	320	3680	710	SF
5	2247/71	4.05	2000	180	1820	450	UVR
6	1587/70	10.18	3000	—	3000	290	UVR
7	336/71	3.2	4000	2500	1500	467	UVR
8	975/69	3.2	6800	—	6800	2230	SF
9	3143/70	1.6	1000	—	1000	625	UVR
10	1243/70	8.0	6000	2600	3400	425	UVR
11	2946/70	6.0	3600	400	3200	533	UVR
12	3290/68	2.0	5000	—	5000	2500	SF

3.11 An Overall Evaluation

The above review of the method of valuation followed by the Government for determining the market value of land acquired for a public purpose brings out the most serious limitation of the comparison method, viz. that the compensation valuation

rests on a small base of actual market transactions. This small base is made still smaller because transactions relating to similar or closely similar land would be very few. Out of a total number of 88 sale deeds considered for the purpose of determining compensation value, 32 (36%) had to be rejected on the ground of dissimilarity (See Table 11). Exactly the same number of sale deeds (i.e. 32) were rejected as account of significant understatement of value. Only 23% of the sale deeds considered for the purpose provided the basis for fixing the compensation values.

TABLE 11

Sale deeds considered, Rejected and Accepted in Determining Compensation values

Table No.	No. of sale deeds considered	Rejections			Total	Accepted
		Dissimilar	Special cases	Under valuation		
1	2	3	4	5	6	7
2	12	2	—	8	10	2
3	10	7	—	2	9	1
4	13	3	4	4	11	2
5	9	1	—	6	7	2
6	7	5	—	1	6	1
7	10	4	—	—	4	6
8	6	4	—	1	5	1
9	9	5	—	2	7	2
10	12	1	—	8	9	3
<b>TOTAL</b>	<b>88</b>	<b>32</b>	<b>4</b>	<b>32</b>	<b>68</b>	<b>20</b>

Inspite of this serious limitation, the officially determined compensation value provides a better yardstick than any other value for assessing the extent of undervaluation, mainly because of the following reasons:

(1) The value is fixed by an elaborate process, in which the village officer at the lowest level to the Collector or Deputy Collector are involved. This ensures, to a great extent, correct classification and comparison and eliminates arbitrariness.

(2) The value must be based on actual market transactions and whenever a higher value is fixed, valid reasons are to be given.

In the first category of cases we have examined, (Table 2) the lowest value in the sale deeds accepted as similar was Rs. 500 per are whereas the lowest value fixed was Rs. 1000 per are. In no other case such wide disparity is seen. This may in all probability, be a case of undervaluation. But it has to be noted that the highest value fixed (for category 1) was less than the highest value stated in the sale deeds accepted as similar. The following table (Table 12) presents the relation between the highest value stated in sale deeds accepted as similar and the value fixed by the land acquisition authorities. Only in two cases, viz. No. 5 and 10(c) do we find a significant deviation from the highest value stated in sale deeds. In the first case the enhancement was allowed by Court on the ground that a period of two years has elapsed from the date of the sale deed and the date of the notification for

acquisition. Since this land was situated in a very important locality an enhancement of 20% was allowed. In the second case, the sale deed was not related to the sale of land in the same category. In three cases we find that the same value as the highest value stated in sale deeds was fixed as the fair market value. In other cases, an increase which varies from 3 to 9 per cent was allowed.

TABLE 12

Relation between Highest value in Sale deeds and Compensation

Table No.	Value		Percentage of increase (approx.)	Reasons for increase
	Highest value in sale deeds Rs. per Acre	Value fixed for compensation Rs. per Acre		
1	2	3	4	5
2	1667	1500	—	—
3	354	370	4.5	lapse of time (1 year)
4	1458	1500	3.0	-do-
5	1575	1875*	20.0	lapse of time (2years)
6	930	930	—	—
7	310	320	3.0	lapse of time (1year)
8	380	380	—	—
9	852	852	—	—
10	(a) 2500	2720	9.0	lapse of time (3years)
	(b) —	900	—	—
	(c) 710	855	20.3	different category

\* The original value fixed was Rs. 1565 per acre, which was enhanced by the Court to Rs. 1875.

(3) The value fixed can never be lower than the market value, for the owners of the land are otherwise likely to exercise the right to have their claims for higher value referred to the Court. This acts as a sufficient safeguard against fixing values lower than the market value as compensation for land acquired.

The conclusion which emerges from the foregoing discussion of the method of valuation is that the officially determined value of land for purposes of compensation is likely to be close to the market value. Therefore this value should provide us with a reasonably good basis for our purpose of assessing the extent of undervaluation.

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## C H A P T E R   I V

### T H E   E X T E N T   O F   U N D E R V A L U A T I O N

#### 4.1 Method Assessment

Our analysis in Chapter III clearly indicates that understatement of values in property transactions is quite widespread. Of the 88 sale deeds ~~was~~ considered for purposes of fixing compensation values, as many as 32 had to be rejected on the ground of significant undervaluation. In this Chapter an attempt is made to assess the extent of undervaluation in these 32 cases. (See Appendix) It will be wrong, however, to conclude that undervaluation was resorted to only in the 32 cases being studied in this Chapter. Even in the case of another 32 sale deeds rejected on grounds of dissimilarity, there could have been undervaluation; but we have no dependable basis for assessing the extent of undervaluation, if any, in these cases.

It will be recalled that in the preceding chapter, the land acquisitions studied by us were classified into nine categories based on the place and purpose of acquisition. It will be recalled also that, (a) the number of sale deeds taken up for comparative analysis differed from category to category, and (b) the proportion thereof rejected on the ground of significant undervaluation also varied from category to category.

For the purpose of this chapter, all the 32 sale deeds rejected on the ground of undervaluation are considered together. The extent of undervaluation is assessed with reference to the compensation value fixed by Government when land is acquired for a public purpose.

#### 4.2 A Summary View

It can be seen from Table 1 that of the 32 cases of undervaluation, there were seven cases with undervaluation between 90 and 100%; two cases between 80 and 90%; one case between 70 and 80%; six cases between 60 and 70%; six cases each between 50 and 60% and between 40 and 50%; three cases between 30 and 40% and one case between 10 and 20%. The number of sale deeds in each category based on the extent of undervaluation as percentage of undervalued sale deeds and of all similar sale deeds is also given in Table. 1

TABLE 1

A Summary of the Extent of undervaluation in 32 sale deeds.

Extent of undervaluation (percent)	No. of sale deeds	As % of undervalued sale deeds	As % of all the sale deeds (excluding dissimilar)
1	2	3	4
1 - 20	1	3.1	1.9
20 - 30	nil	—	—
30 - 40	3	9.4	5.8
40 - 50	6	18.8	11.6
50 - 60	6	18.8	11.6
60 - 70	6	18.8	11.6

TABLE 1 (Contd.)

1	2	3	4
70 - 80	1	3.1	1.9
80 - 90	2	6.2	3.8
90 - 100	7*	21.8	13.4

\*out of which 5 are cases of 100% undervaluation

#### 4.3 Rural - Urban Differences

The data relating to sale deeds was analysed from another angle to find out if there are any marked differences between the urban and the rural areas in the case of undervaluation. The sale deeds were arranged according to the place of registration and the number of under valued documents and their distribution among various levels of undervaluation were studied. The results are given in Table 2.

TABLE 2

#### Distribution of undervalued sale deeds in Different Categories and according to the Place of Registration

1	2	3	Distribution of undervalued sale deeds					
			4	5	6	7	8	9
Place of Registration.	Total No. of sale deeds.	No. of sale deeds under valued.	1-20	20-40	40-60	60-80	80-90	Above 90
1 Patton	9	6	1	1	2	-	-	2
2 Fort	18	14	-	1	4	4	1	4
3 Kashakutton	6	3	-	-	2	1	-	-
4 Neyyattinkara	2	1	-	-	-	-	-	1
5 Thiruvallan	11	8	-	1	4	2	1	-
6 Balaramapuram	6	-	-	-	-	-	-	-
<b>TOTAL</b>	<b>52</b>	<b>32</b>	<b>1</b>	<b>3</b>	<b>12</b>	<b>7</b>	<b>2</b>	<b>7</b>

\*This is exclusive of sale deeds rejected on the ground of dissimila:

Of the above six offices of registration, the first two are within the territorial limits of Trivandrum City. The next two, viz: Neyyattinkara and Kazhakuttom are outside Trivandrum but are developing suburban areas and the last two are suburban areas with predominantly rural character. If we classify them into Metropolitan area, Developing Suburbs and Rural Suburbs, we get the following results.

TABLE 3

Extent of undervaluation in Metropolitan Areas, Developing Suburbs and Rural Suburbs

Nature of locality	No. of sale deeds	No. of sale deeds under-valued	Percent- age of under va- luation. 3 as % of (2)	Distribution of under- valued sale deeds					less than 40
				above 90	80-90	60-80	40-60		
1	2	3	4	5	6	7	8	9	
Metropolitan	27	20	74.1	6	1	4	6	3	
Developing Suburbs	18	4	50.0	1	-	1	2	-	
Rural Suburbs	17	8	47.0	-	1	2	3	-	

It can be seen from the above table that not only is the proportion of cases of undervaluation the highest in the Metropolitan area but also is the proportion of cases falling in the category of "above 90%" undervaluation. Could one, therefore, draw the conclusion that undervaluation is not only more widespread in the more urbanised areas but also more intense? To answer this question with maximum objectivity, we worked out

a weighted average of undervaluation, groupwise as well as for all the 32 cases of undervaluation.

The procedure we have followed in working out the weighted average is to use the total value of the land (i.e. the area of land x the compensation value per acre) as the weight.

Very interestingly, while the overall weighted average of undervaluation works out to 60.8%, the corresponding average works out to 58.8% for the metropolitan area 62.1% for the Developing Suburbs and 65.2% for Rural Suburbs. So it will be erroneous to say that undervaluation is less intense in the less urbanised areas. Obviously, the factors that tend to influence peoples' decisions in favour of understating the valuation of their landed property in sale deeds are equally, if not more, important in the less urbanised parts of the state also.

**APPENDIX**

**Extent of undervaluation in sale deeds considered for fixing compensation value  
in Land Acquisitions**

Sl. No.	Document No.	Area in Acres	Total value Stated Rs.	Value of improvements Rs.	Land Value Total Rs.	Land Value Rate Rs./Acre	Compensation Value Rs./Acre	Undervaluation (Difference between 8 & 7) Rs./Acre	Extent of undervaluation (9as % at 8)
1	2	3	4	5	6	7	8	9	10
<b><u>Sub-Registrar's Office, Patton</u></b>									
1	2893/71	1.2	1500	1500+	nil	-	375	375	100.0
2	2895/71	2.4	600	600+	nil	-	375	375	100.0
3	843/66	4.9	4000	—	4000	817	1500	683	45.5
4	1027/66	2.0	9000	7500	1500	743	1500	757	50.5
5	591/67	9.5	24000	15000	9000	946	1500	554	36.9
6	3261/67	3.8	5000	—	5000	1250	1500	250	16.7
<b><u>Office, Sub-Registrar's/Port</u></b>									
7	2868/69	4.0	2000	—	2000	488	1520	1032	67.1
8	361/70	3.6	900	—	900	250	1688	1438	85.2
9	1363/70	4.0	3000	—	3000	750	1688	938	55.6
10	2768/70	4.0	3000	—	3000	750	1688	938	55.6

APPENDIX (Contd.)

1	2	3	4	5	6	7	8	9	10
11	2642/71	4.5	3300	—	3300	733	1875	1142	60.0
12	2526/72	4.0	4000	513	3487	872	1875	1003	31.6
13	2542/70	1.6	1000	640	360	225	1000	775	77.5
14	515/71	0.8	200	200+	—	—	1500	1500	100.0
15	3112/71	6.01	1500	1300	200	33	1000	967	96.7
16	1955/71	8.0	5000	400	4600	575	1500	925	61.7
17	2591/72	4.8	12000	10000	2000	417	1350	933	69.0
18	2256/72	1.6	2000	3000	—	—	1500	1500	100.0
19	1289/72	3.2	400	120	280	87	1500	1413	94.1
20	165/71	3.2	2000	400	1600	500	1000	500	50.0
<u>Sub-Registrar's Office, Kozhikuttom</u>									
21	2270/70	8.9	2000	150	1850	208	380	172	45.2
22	1514/69	20.2	5000	—	5000	247	767	520	67.6
23	3167/71	4.1	2000	190	1810	452	852	400	46.9
<u>Sub-Registrar's Office, Neyyattinkara</u>									
24	719/70	0.7	500	500	—	—	930	930	100.0

APPENDIX (Contd.)

1	2	3	4	5	6	7	8	9	10
<u>Sub-Registrar's Office, Thiruvallur</u>									
25	9/69	3.3	1000	—	1000	300	810	510	62.9
26	1099/69	1.8	1000	300	700	384	810	426	52.6
27	2247/71	4.1	2000	180	1820	450	900	450	50.0
28	1987/70	10.2	3000	—	3000	290	900	610	67.7
29	336/71	3.2	4000	2500	1500	467	900	433	48.1
30	3143/70	1.6	1000	—	1000	625	900	275	30.6
31	1243/70	8.0	6000	2600	3400	425	900	475	52.8
32	2946/70	6.0	3600	400	3200	533	2720	2187	80.4



APPENDIX (Contd.)

Notes

1. The details regarding the 32 sale deeds which were rejected in fixing compensation value on the ground of significant undervaluation and the extent of undervaluation in each case are given in the Appendix.
2. The sale deeds are arranged on the basis of the place of registration.
3. In many cases (Nos. 1, 2, 14, 18 & 24) the value of improvements is equal to or more than the total value stated in the sale deeds. Hence undervaluation to the extent of 100% in these cases.
4. In assessing the extent of undervaluation, the compensation value fixed by Government when land is acquired for a public purpose is taken as the market value. But in some cases necessary adjustments are made for lapse of time between the dates of the sale deeds and the date of acquisition. The sale deeds in Sl. Nos. 7 to 12 were considered and rejected in connection with the acquisition of land for the expansion of the Airport, Trivandrum. The value fixed by the authorities was enhanced by 20% by the Court, on the ground that a period of 2 years has elapsed between the date of the sale deed accepted as basis for valuation and the date of notification for acquisition. The value fixed by the Court vis. Rs. 1875 per are, related to the year 1971. Following this principle, a reduction of 10% was made in the case of sale deeds in Nos. 8 to 10 registered in 1970.

and a further reduction of 10% was made in No. 7 registered in 1969. Similarly, No. 22 is a case of rejection in connection with Kashakutton Land Acquisition, where the compensation value fixed was Rs. 852 per are. But this value related to the year 1971 and a reduction of 10% was made in No.22 because of a lapse of two years. A similar reduction is made in Nos. 25 and 26 also because of the same reason.

5. Sl. Nos. 3 to 6 were considered and rejected in connection with acquisition of land for the Kerala State Housing Board. Here the area under acquisition was 157 acres and the compensation value was fixed at Rs. 1500 per are. The area involved in the sale deeds listed above is comparatively small, in which case the market value is likely to be higher. But this effect may be set off against the difference in market value due to lapse of time because the acquisition proceedings were started only in 1968, while the sale deeds were registered in 1966 and 1967.

6. No. 21 was considered and rejected on account of undervaluation in connection with Kashakutton Land Acquisition. For fixing the compensation value, Document No. 235 registered on 22.1.1969 which stated the value was Rs. 380 per are was taken as the basis. The land involved in No. 21 is similar in all respects and lies adjacent to the land transferred under D-No. 235. Moreover the transfer took place only at a later date, viz. 4.7.1970. Still the value stated is 45.2% less than the value stated in D-No. 235.

7. No. 15 is a case of rejection in connection with Poonthura land acquisition. For fixing compensation value, D-No.1954 registered on 21.8.1971 and which stated the land value as Rs. 1375 per are was accepted as basis. No. 15 was also registered on the same day and related to the sale of land similar in all respects to the land in D.No. 1954, but the land value was stated as Rs. 575 per are. This is a typical instance where the registering officer could have exercised his jurisdiction to refer the matter to the District Collector Under Section 45 A (1) of the Kerala Stamp Act.

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## C H A P T E R V

### C O N C L U S I O N S A N D S U G G E S T I O N S

#### 5.1 Conclusions

At the outset, we made the hypothesis that it had become a general practice not to state the real consideration in sale deeds when land was transferred by one person to another. This practice of undervaluation causes considerable loss of revenue to the state by facilitating the evasion of capital gains tax by the seller and evasion of wealth tax and stamp duty by the buyer. Apart from this, undervaluation provides an outlet for black money.

We discussed in this context some of the measures adopted by the Union and various State Governments to curb the growing tendency of undervaluation. In particular, we discussed the provision in the Income tax Act enabling the Central Government to acquire property when a property of a fair market value exceeding Rs. 25,000 is transferred and the competent authority has reason to believe that the market value exceeds the apparent consideration by more than 15%. The compensation for such acquisition shall be the value stated in the instrument of transfer plus 15% thereof. In some states, there have already been in existence pre-emption laws. But a decision of the Supreme Court has held pre-emption laws based on vicinity unconstitutional as they

infringed the fundamental right to deal with property guaranteed in Article 19(1)(f) of the Constitution. Several States have introduced other enactments with a view to ending evasion of stamp duty through undervaluation.

In Kerala State, a provision (Section 45 A) was inserted in the Stamp Act, which provided for a reference by the Registering Officer to the Collector if he has reason to believe that the value of the property or the consideration, as the case may be, is not truly set forth in the instrument of transfer. The Collector may also proceed Suo motu, in the case of an instrument not referred to him.

Our object was to examine the extent of undervaluation actually prevailing in Kerala. For this purpose, a clear idea of the concept of market value was considered necessary. So we started with a general discussion of the concept of market value followed by an analysis of the concept of market value employed by government when land is acquired for a public purpose. Since our purpose was clearly to find out the extent of undervaluation with reference to a value that would prevail in a real market (i.e. a market with all its imperfections) it was felt that the definition adopted by government as the basis for fixing compensation was adequate for our purposes.

Our analysis of 88 instruments of transfer proved beyond doubt the correctness of our initial hypothesis. Of these 36 instruments related to land dissimilar to the land acquired. Of the balance, 61.5% of the instruments were

undervalued. In more than 20% of the cases of undervaluation, the extent of under valuation was above 90%. In nearly 70% of the cases, the extent of undervaluation exceeded 50% of the market value. It was also seen that the practice of undervaluation is more prevalent in urban areas in comparison with the suburban and rural areas; but the extent of undervaluation, in cases where it is resorted to, is somewhat higher in less urbanised areas.

Our study has clearly brought out another interesting fact. When land is acquired for a public purpose, the government fixes the market value and awards compensation to the owners. The market value is fixed by using the comparative method of valuation. For this purpose, a number of documents are examined by government officials and their findings are recorded. But even in cases where they record a finding that the value stated in a document is an understatement, no further action is taken. The Government officially accepts that a large number of documents are undervalued and on the basis of this acceptance, awards a higher amount as compensation to the owner of the land under acquisition. But we have not come across cases where the authorities have invoked even the existing legal powers to reopen clear cases of undervaluation even when they were not time barred. In 18 out of the 32 cases of undervaluation, the fact of undervaluation came to the notice of the authorities within the prescribed time limit; but no attempt to exercise the existing powers (especially under S. 45A of the Kerala Stamp Act) was made.

Any suggestion, therefore, to vest the authorities with greater powers to deal with cases of undervaluation must not ignore that the existing powers in this regard, however inadequate, are hardly being used. The enthusiasm for suggestions to enhance the powers of the authorities in this regard, including the suggestions which follow, has got to be tempered with a good amount of realism.

## 5.2 Suggestions

The foregoing should not however be construed as an argument for no action whatsoever, knowing fully well that undervaluation is so widespread and large. Hence the suggestions that follow:

### 5.2.1 Income tax Provisions

Chapter IX A of the Income tax Act, which was inserted to serve as a deterrent to the practice of undervaluation, must be suitably amended to plug the existing loopholes. The following changes are necessary.

(a) The exemption limit of Rs. 25,000 which provides an opportunity to transfer property in small pieces must be abolished.

(b) The time limit of nine months for initiating proceedings must be extended to two years.

(c) The provision for payment of 15% solatium in addition to the apparent consideration is unnecessary. A person who is guilty of evasion of tax or concealment of income does not deserve a solatium.

(d) The exemption made in Section 269 D in favour of transfers to relatives on account of natural love and affection works to the advantage of tax evaders. This must either be taken away or sufficient safeguards against bonam and bogus transactions should be incorporated.

(e) The provisions of Chapter XX A which are only 'enabling' must be made 'obligatory'. The Government should have the duty, not only the power, to acquire property in cases of undervaluation.

### 5.2.2 Pre-emption Provisions

Though pre-emption laws based on vicinity were held to be unconstitutional by the Supreme Court, juristic opinion is in support of the view that the State is competent to enact pre-emption laws. There should be a public purpose to justify such enactment. The right to pre-emption should be made available on a wider scale and any person should get an option to buy the property above the seller's own valuation contained in the instrument of transfer. The Government should also retain this right. This is necessary because the provisions in the Income tax Act would be applicable only to a small percentage of our population.

### 5.2.3 Stamp Act Provisions

The present provisions of the Stamp Act, if intelligently applied, would be more or less sufficient to put an end to the evasion of stamp duty through under valuation. But we have seen that even in cases where undervaluation is



officially noticed and recorded, the official machinery is not set in motion. The power conferred on the Registering Officer to refer a case of undervaluation to the Collector will not act as an effective check on undervaluation, because the Registering Officer need not necessarily be one who is familiar with the locality. He has no administrative machinery at his disposal to ascertain the market value of land and whether the true consideration has been stated in the instrument of transfer. So it is necessary to shift this responsibility to another official who knows the place very well. The Revenue Officer of the village would be a better choice for this task. It should be made compulsory that along with every instrument of transfer for registration, a certificate of the village Revenue Officer stating that the value shown represents the fair market value should be attached. In cases where property is transferred for a consideration below the market value, the circumstances and reasons for doing so should be clearly stated by the parties and attested by the Revenue Officer. Revenue Inspectors at the Taluk level should conduct periodic investigations and report to the District Collector. These steps would make section 45 A of the Stamp Act a real deterrent to undervaluation.

### 5.3 Policy, Legislation and Implementation

In solving the problem of tax evasion through undervaluation, as in any other economic or social problem we have to carry on the fight at three levels:

- (1) at the level of policy, by devising methods to solve other related socio-economic problems;
  - (2) at the level of legislation, by enacting effective laws to give life to the policy; and
  - (3) at the level of implementation, by streamlining the administrative machinery in such a way as to eliminate the gap between the statutory provisions and their application.
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